

the reference numeral 62.

In the Specification on page 10, line 15, following the word “system” insert the reference numeral 64.

In the Specification on page 11, line 9 insert between the word “unit” and sentence period the following: --by being retractable towards the frame--.

## **IN THE CLAIMS**

Please amend and cancel the claims as indicated in the “Marked up Version of the Claims” submitted herewith, wherein material to be added is underlined and material to be deleted is in brackets. Also submitted herewith is a “Clean Version of the Claims After the Amendments.” These clean paragraphs should replace the original claims.

## **DISCUSSION AND COMMENTS**

### **RE THE DRAWING OBJECTIONS**

The Examiner has objected to the drawings as failing to comply with 37 CFR 1.84(p)(5) as they do not contain a reference sign mentioned in the description. Applicant has added reference sign 32 to the drawings.

The Examiner has further objected to the drawings under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims with the specific items not shown being enumerated. Applicant has amended the drawings by submitting additional drawings showing each of the enumerated claim features. The newly submitted drawings do not introduce any new matter into the application as originally filed.

With these amended drawings, Applicant believes that the Examiner’s objections

have been overcome and respectfully requests acceptance of the drawings and withdrawal of the objections to the drawings.

#### **RE THE SPECIFICATION OBJECTION**

The Examiner has objected to the specification as failing to provide proper antecedent basis for the claimed subject matter, specifically, that claims 14, 30 and 45 claim structure that “the foot railing is retractable towards said frame” which is allegedly not specified in the specification. While Applicant believes that the specification on page 11 indicating that “the foot railing 34 may be removable or may be retractable into the body of the compartment of the unit” is sufficient to support the claimed structural language, Applicant has clarified the specification by adding language that “the foot railing 34 is retractable towards said unit by being retractable towards the frame.” With this clarification Applicant believes the objection to the specification noted above is overcome and respectfully requests withdrawal of the objection.

#### **RE THE CLAIM REJECTIONS**

The Examiner has rejected claims 1 to 50 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, listing various bases for this contention.

As to the first listed bases regarding vague language, Applicant has amended the claim language to particularly point out and distinctively claim the subject matter which Applicant regards as the invention and, in doing so, believes that the listed bases for rejecting the claims under 35 U.S.C. 112, second paragraph, have been overcome.

Specifically, Applicant has taken the following actions:

Claims to “adapted for” and “adapted” have been amended in wording to specify structure being claimed, i.e., amendments to claims 1, 5, 22, 23, 33, 38 and 39 have been made.

Claim 4 language has been amended to delete the phrase, “is designed to be” and replace it with more specific structural claiming language.

Claim 17 has been amended to eliminate any antecedent issues by deleting the phrase, “and powered by said electrical means.”

Claim 33 has been amended in language to avoid the vagueness implied by the “adapted for” language noted above, but Applicant respectfully disagrees with the contention that the claim is incorrect in structurally claiming that the nose wheel assembly receives the towing bar. This structure is disclosed in the specification at page 7, first paragraph and illustrated in Figure 6. Specifically, the specification states at the cited location that “[t]his towing bar attachment 30 may attach directly to the extending tongue assembly 24, or to the nose wheel assembly 26, while the nose wheel assembly is connected to the extending tongue assembly 24”, this structure being illustrated in Figure 6. As such, Applicant respectfully disagrees with the contention and requests that it be withdrawn.

Claim 46 has been amended to reflect that the lights are connected to the at least one battery for providing electrical power.

Claim language as to the mounting of the seat members has been clarified to describe better the structure being claimed and to avoid any illogical structural claim language.

Consequently Applicant respectfully requests that the rejection of the claims under 35 U.S.C. 112, second paragraph, be withdrawn and the claims passed to allowance.

Claims 1-5, 9-11, 16, 18-21, and 33 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,225,059 to Kappos (“Kappos”), in view of U.S. Patent No. 2,771,318 to Jagsch (“Jagsch”) and U.S. Patent No. 3,940,175 to Robison (“Robison”) or U.S. Patent Application No. 2002/0180228 to Poarch et al. (“Poarch”) in view of the foregoing Robison reference. (Although the Office Action repeatedly discusses a “Robinson” reference as a basis for its reasoning, no such reference is found in the Notice of References Cited, but instead a Robison reference is listed. Consequently, Applicant is proceeding under the assumption that the reference being made is to the Robison reference cited in the Notice of References Cited and is responding accordingly. Likewise claim 33 is dependent from independent claim 22 which has not been rejected on these cited grounds, and is instead further specific as to the structure being claimed in claim 22. As such, Applicant believes that claim 33 cannot be rejected on this basis and respectfully requests that the rejection of claim 33 on these grounds be withdrawn.)

Kappos provides an insulated ice cooled container mounted on a wheeled road traveling trailer. Separable latchable doors are provided in the container for entry to the ice chamber and receptacle carrying area.

The present invention, as per the claims, provides a structure having a mobile bar mounted on a wheeled trailer with a generally flat counter top member that may be used as a bar for refreshments, a telescopic canopy over the counter top bar member and a

seating system for bar patrons.

Applicant believes that the Kappos reference does not preclude the patentability of Applicant's invention for at least the following below detailed reasons.

Specifically, Kappos is clearly directed to claiming an insulated ice cooled container mounted on a wheeled road trailer designed to hold various beverages for transport to a point of use for on-site dispensing. It is merely a wheeled ice chest with a spigot that makes it more convenient for carrying heavy beer kegs and the like and keeping them refrigerated at remote locations. There is no bar element found nor suggested in Kappos. The suggestion is made that the top area of Kappos's container is the same as that claimed by Applicant in his claims for a "generally flat counter top member closing the top portion of the compartment that may be used as a bar for refreshments." (Applicant claim 1). This is not the case and it is improper to so conclude.

Kappos states at column 1 lines 62 et seq. that "access to chamber 20 is provided by opening 24 in top 26 and a refrigerator type door 28 with appropriate hinges 30 and latch 32 serves as a closure for opening 24." This structural arrangement is clearly and best illustrated in Kappos Figs.1 and 2. As disclosed, claimed and illustrated, Kappos' top 26 is not suitable for a bar area nor is it intended to be a bar area. Door 28 comprises a major portion of the top area of Kappos's structure and, as an access opening for insulated chamber 20 containing beverages, ice and the like, must be kept clear of obstructions at all times, as it will be constantly opened and closed for access into chamber 20 so that distribution of transported beverages, ice and the like, the stated objective of Kappos, can be accomplished. With the need for such access, it cannot be

used as a bar for refreshments as that term is commonly understood and employed. Patrons will not be drawn to Kappos's container top nor would they be encouraged to stay there in a social setting with the constant need to maintain the top area clear for access.

Additionally, latch 32 and hinges 30 are also not conducive to a welcoming atmosphere of a generally flat counter top bar member but are instead hindrances to be worked around by both a user and any would-be patrons. The latch and hinges limit both the number of patrons and their positioning around top 26 due to the necessity for access discussed above thereby discouraging, rather than encouraging, the use of the top portion as a bar. Additionally, it is directly contrary to the purposes and objectives of Kappos to attempt to utilize the top portion of its structure as a bar area due to the fact that the necessity for access to insulated chamber 20 via door 28 also limits the amount of area available for surrounding area 26, as increasing the width of area 28 also increases the difficulty of accessing door 28 and the interior of the insulated compartment 20.

In addition, the placement of the towing hitch 54, wheel wells, signal lights 60, and side entrance door 38 in rear wall 34 (best seen in Figure 4 from above) not only discourage use of top 26 as a bar area, but make it both impossible to do so by actively discouraging patrons to congregate and use the top 26 as a social environment for relaxing and making acquaintances. The rearward area 34 of the box must be kept clear of obstructions for access into the interior of the container. On both sides signal lights and wheels wells protrude to prevent and discourage any would-be patrons from congregating, while additionally on one of the two sides the beverage dispensing spigots are located requiring that that area be kept clear at all times as well. On the sole

remaining side of the container, towing tongue 54 protrudes making it impossible for would-be patrons to approach or use the top 24 from that direction. Top 24 is then effectively isolated from would-be patrons and cannot function as a “generally flat counter top member...that may be used as a bar for refreshments.” (Applicant claim 1).

A bar is designed as a draw by being an area where patrons can rest, relax and enjoy themselves and one another sitting around the bar area. Kappos provides merely a means to transport and distribute beverages similar to having a tapped beer keg on wheels without providing the social environment of a bar area as claimed by Applicant. This was exactly the problem that the present invention aims at solving by providing a congregation point that encourages the cohesiveness of partygoers by providing “a centralized meeting place to meet and greet both old and new friends, encouraging renewed and new friendships by its lively atmosphere and décor which can set the tone of a party.” (Applicant Specification page 1). Kappos’s invention merely calls the thirsty drinker back to get a refill and then encourages him to make way for the next thirsty drinker. He may mill about the area so as to be near his source of beer, but the lack of a concentrated spot providing a place to sit and meet others is lacking. A bar area, as provided for in Applicant’s claimed structure, is just such a gathering point around which patrons are drawn to concentrate and mingle in a social environment of a bar which Kappos’s neither top 24 nor claimed invention or disclosure can provide or suggest. See Applicant Figures 1-3.

Since Kappos lacks this fundamental structural component, as well as any suggestion to modify its disclosed and claimed structure to provide a bar area, it cannot function as a valid reference to preclude Applicant’s claim for patentability of his

invention as claimed.

In fact, any attempt to add or create a bar area from the top 26 and cover 28 is doomed to failure as rendering the attempt inoperative for the basic stated purposes of the Kappos invention. Specifically, if the peripheral area indicated as top 26 were increased in width to enable patrons to utilize it as a resting place for social interaction, cover 28 is no longer readily accessible as required for easy and nearly constant access into insulated chamber 20. Both functions cannot occur simultaneously with the Kappos disclosure and claimed inventive structure. Likewise, granting for the moment that such an arrangement were even possible, no patrons could congregate around the periphery due to the fact that access door 38 must be kept clear for entry into compartment 22 (preventing anyone from standing at this side of the structure) while towing hitch 56 (the opposite structure side) and signal lights 60 in combination with the protruding wheel wells and spigot assembly effectively prevent would-be patrons from standing close enough to the structure to utilize top 26 on the remaining opposite two sides. Thus, no modification or combination would allow or permit Kappos to be modified to provide a mobile bar as disclosed, taught or claimed by Applicant.

Furthermore, none of the remaining references cited in rejecting these claims provides this missing element of a generally flat counter top member that may be used as a bar for refreshments nor is that claim made. Thus, no combination formed, assuming such combination were even possible, by picking and choosing structural elements from these references to supply missing structural components of the Kappos reference can be made. There is also no suggestion in Kappos or any of the cited references that they are deficient and need supplementing by mutual combination. Any attempt to pick and

choose selectively those elements admittedly missing from Kappos and combine them with Kappos is driven merely by hindsight and would result in, at best, a “Rube Goldberg” combination that would be not merely inefficient and inelegant, but inoperable and contrary to the stated objectives and structure of Kappos.

Thus using Jagsch to add a canopy (structurally different from that of Applicant’s claimed canopy), or seats by reference to Poarch et al. and Robinson (cannot be added to Kappos’s container sides due to the access opening, spigot, towing bar, etc. discussed above), even without any suggestion in any of these references for such a combination, will continue to fail to provide Applicant’s inventive structure as claimed.

The real suggestion to modify Kappos to convert a simple mobile “beer keg” to the mobile bar of Applicant’s claims which provide a social environment for patron interaction, comes from the inventors’ claims, and the Examiner is impermissibly using hindsight to reconstruct the claimed invention.

In In re Dembiczak, the applicant was claiming a large trash bag made of orange plastic and decorated with lines and facial features, so that the filled bag resembled a jack-o’-lantern. 50 U.S.P.Q.2d 1614, 1615 (Fed. Cir. 1999). The cited art was conventional trash bags and two Teacher’s handbooks that included children’s craft projects on how to decorate crepe paper jack-o’-lanterns or paper bag pumpkins. (*Id.* At 1615-1616). The court stated:

In the case of less technologically complex invention, where the very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of a hindsight syndrome **wherein that which only the inventor taught is used against its teaching...**

(*Id.* At 1617). The court reversed the obviousness rejection because of no

evidence of a suggestion to combine these references. The court further stated, “the showing [of evidence of suggestion or motivation to combine] must be **clear and particular.**” (*Id.*). (emphasis added). In the present case there is no suggestion found in Kappos to create any such combination or modification that provides the admittedly missing elements from Kappos. Applicant argues that any unsupported combination or modification therefore lacks the clarity and particularity necessary to suggest the Examiner’s combination without the use of hindsight which is impermissible to reject Applicant’s claims.

Accordingly, for at least these reasons Applicant believes that his invention as claimed is patentable over the cited references and respectfully requests that the rejection of these claims be withdrawn and the claims passed to allowance.

Claims 6-8, 22-27, 34-41, 47-50 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kappos in view of Jagsch and (sic) Robinson as applied to claim 1 above, and further in view of U.S. Patent No. 1,370,517 to Cheeseman (“Cheeseman”). Cheeseman is relied upon to provide an admittedly missing electrical hookup to the previously analyzed alleged combination of Kappos, Jagsch and Robison. Cheeseman provides a tea caddy and utilizes a plug 27 for providing electrical power to a heating element on the caddy.

Once again, Cheeseman, adding merely an electrical outlet, fails to provide the missing essential element of a generally flat counter top member that may be used as a bar for refreshments as required to preclude patentability for Applicant’s claimed structure found in the subject claims. Moreover, Applicant has claimed structure of “means for providing electrical power to the mobile bar **mounted in** said compartment.”

(Applicant claim 22, emphasis added). Clearly as indicated the means is a power distribution system mounted in the compartment to supply power throughout the mobile bar while Cheeseman is a single wire connecting a single on-board device (a heating pan) to an external cord plugged into plug 27. In Applicant dependent claim 24 and independent claim 38 the claimed structure is even more distinct in requiring an on-board source of electrical power, i.e., a battery, which is clearly distinguishable over a passive electrical plug. For at least these reasons, Applicant believes that his claims are patentably distinct over the cited references taken in any reasonable combination and respectfully requests that the rejection of these claims be withdrawn and the claims passed to allowance.

Claims 12-13, 15, 25, 28, 29, 31, 42, 43 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kappos in view of Jagsch and (sic) Robinson or Poarch et al. in view of Robison as applied to claim 1 above, or Kappos in view of Jagsch and Robison in view of Cheeseman as applied to claim 22 and further in view of U.S. Patent No. 2,845,780 to Conklin et al. (“Conklin”).

Conklin is relied upon to provide an admittedly missing rear wall railing to the previously analyzed alleged combination of Kappos, Jagsch, Robison, and Cheeseman. Conklin provides a food service cart as those commonly found in hospitals to deliver food to a patient’s room. The railing, apparently forming the admittedly missing element, is designated by reference arrow 11 and is described as follows, “a main frame generally indicated at 10 which may be provided with a cushioning bumper 11...” (Conklin column 2, lines 21-22). No further mention is made of the utility of this rear bumper element 11 as being useful as a “foot support” and, in fact, examination of Conklin’s Figure 1, the

only Figure in which the bumper appears, precludes this conclusion. Specifically as shown in Figure 1, the bumper is truly a bumper and is not intended to extend sufficiently to enable it being utilized as a foot rest, as that would preclude opening the doors 17, 18 and the heat compartment door (no reference numeral indicated but visible in Figure 1 as the open right side door with extended tray 22). The fact that the bumper extends fully around the bottom portion of the cart supports the single nature of this structure as being a protective bumper and not a resting place for feet. Applicant's claimed structure on the other hand clearly calls for a foot rest that is used to foster the social environment of a bar to encourage patrons to remain, relax and mingle over the generally flat counter top bar member. The bumper element of Conklin carries no such purpose and indeed would not provide any were it somehow grafted onto the proposed combination of references. Accordingly, Conklin fails to provide any of the admittedly missing elements needed to preclude Applicant's claimed invention. Applicant therefore respectfully requests that the rejection of these claims be withdrawn and the claims passed to allowance as well.

Claims 14, 30 and 44 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kappos in view of Jagsch and (sic) Robinson or Poarch et al. in view of Robison as applied to claim 1 above, or Kappos in view of Jagsch and Robison in view of Cheeseman as applied to claim 22 and further in view of Conklin and U.S. Patent No. 4,514,002 to McIntosh ("McIntosh").

McIntosh provides a pivoted two position bumper for off the road vehicles and is relied upon to supply this bumper as a missing element to the previously analyzed combination. It provides merely a two positioned bumper having a first position for cross country travel and a second position for over the road travel. The genesis of McIntosh's

invention is the need to accommodate the two very distinct demands placed upon a vehicle chassis by travel over the relatively smooth terrain of a road and that normally unsmooth terrain sought by a thrill seeking off-roader.

Once again, the subject claims are dependent upon claim language for structure that has already been analyzed as being patentably distinct over the previously cited references and combinations thereof. McIntosh continues to fail to provide necessary missing structural elements to the previously discussed references and combinations. As such, Applicant respectfully requests that the rejection of these claims be withdrawn and the claims passed to allowance.

Finally, claims 17, 32 and 46 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kappos in view of Jagsch and (sic) Robinson or Poarch et al. in view of Robison as applied to claim 1 above, or Kappos in view of Jagsch and Robison in view of Cheeseman as applied to claim 22, or this combination further in view of Conklin as applied to claim 42, all in view of U.S. Patent No. 4,974,500 to Boyd et al. ("Boyd").

Boyd provides a hot beverage preparation and dispensing cart having built-in lighting 52, 54 within a canopy that extends over the top counter of the cart.

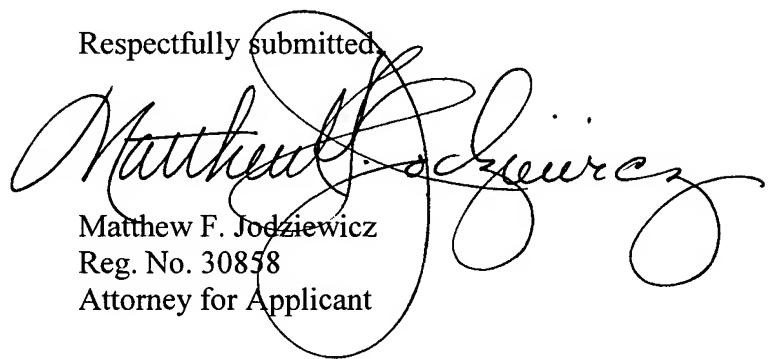
As discussed above, Boyd fails to provide any of the admittedly missing elements to the previously analyzed references and combinations thereof that would render Applicant's claimed invention obvious or non-patentable as required. The addition of built-in lighting does not provide a bar area, nor does it provide a foot railing, etc. As such, Applicant believes that the claims remain patentably distinct over any and all of the cited references, including Boyd, either singly or in any reasonable combination. Applicant therefore respectfully requests the withdrawal of the rejection of these claims

and requests that they be passed on to allowance.

In conclusion, Applicant has responded to pending Office Action dated April 19, 2005 by supplementing the drawings to overcome the objections raised by the Examiner, by amending the claims making them more definite as to the subject matter being claimed, and by distinguishing the claimed invention as being patentable over the references cited by the Examiner in refusing allowance. With this response Applicant believes the application to now be in condition for allowance, and allowance of the application is respectfully requested.

Respectfully submitted,

Date: *July 19, 2005*



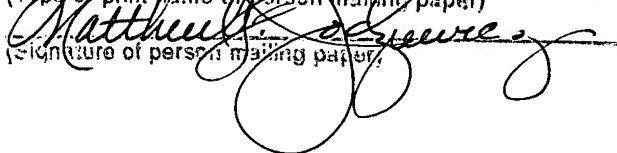
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